



United Domestic Workers of America

Affiliated with NUHHCE, AFSCME, AFL-CIO

**Preliminary Comments on the
California Performance Review**

*HHS02: Realigning the Financing and Administration of
Health and Human Service Programs*

*HHS32: Transfer the In-Home Supportive Services
Program to the Department of Health Services*

August 20, 2004

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PRELIMINARY COMMENTS ON THE CALIFORNIA PERFORMANCE REVIEW

**HHS02: Realigning the Administration of Health and Human Service
Programs**

**HHS32: Transfer the In-Home Supportive Services Program to the
Department of Health Services**

August 20, 2004
San Diego, CA.

The United Domestic Workers of America has taken an active role in policymaking at the state level ever since its founding in 1978. Our advice has been important in the adoption of several measures relating to the In-Home Support Services (IHSS) program, including the adoption in 1999 of AB 1682, requiring counties to establish procedures for screening prospective IHSS home care workers, advisory committees to county supervisors which enable IHSS clients to speak directly to county policymakers, and establishing the Employer of Record, making it possible for IHSS home care workers throughout California to bargain for wages above the minimum legal amount. These changes are bringing the IHSS program to a level where it can begin to carry the weight of caring for the increasing numbers of very poor aging and disabled individuals.

UDW appreciates Governor Schwarzenegger's interest, evidenced during the current legislative session, in the welfare of California's 350,000 IHSS clients and their 290,000 caregivers. Approval of the §1115 Independence Plus waiver, drawing down a more equitable share of federal dollars, will save California taxpayers \$1.7 billion over five years, including \$200 million in 2004-05. His Quality Assurance proposals, after review by stakeholders and adoption by the Legislature, will not only save taxpayer dollars but will make care for IHSS clients more uniform across California.

This month the Governor released his California Performance Report (CPR), a thorough review of all facets of California state government. Below are the three major recommendations together with our preliminary comments regarding the Governor's proposals relating to IHSS management and funding. Our comments at this time are necessarily preliminary. We will provide additional support in the coming months.

A. CPR recommends the Governor convene a working group comprised of county governments, the Legislature and the Administration, charged to develop a realignment implementation plan for health and human services.

All stakeholders need to be a part of any review. This continues present practice, most recently as required by the newly adopted W&I§12305.72 relating to the forthcoming IHSS Quality Review effort.¹

B. CPR recommends moving responsibility for IHSS program administration to the state level from its current operational base in California's 58 counties. "Moving full responsibility and funding for IHSS to the state would address the gap that currently exists in the continuum of services administered by the state for seniors and disabled persons who are at risk of institutionalization in a nursing facility [and] centralize the full range of acute, in-home, day care and institutional services at the state level..."² There are several vital considerations that must be addressed:

This change could increase California's exposure to liability for IHSS client injuries. Placing the responsibility for IHSS at the state level would place the state in direct jeopardy from client lawsuits. Restricting this liability to stand-alone Public Authorities was a priority behind the enactment of AB1682. This exposure can be particularly acute in a situation involving the decentralized, in-home care of 350,000 aged, blind and disabled individuals each of whom hires his or her own caregiver. This issue has been raised in both Humboldt and San Diego county in recent years.³

The responsibility for client assessments already lies at the state level. Requirements for assessing the number of hours required to keep IHSS clients in their homes are already established in regulation. Regulations regarding IHSS client assessments are established in MPP 30-700 *et. seq.* A major review designed to strengthen guidelines and increase statewide uniformity is now being undertaken as a result of the Governor's Quality Assessment initiative, first proposed in his 2004-05 budget. The advantage of further changes at this time is unclear.

The recommendation for moving the responsibility to the state (operated through counties) apparently stems from the fact that although counties have a perceived financial stake in IHSS,⁴ they have no stake in the next higher level of care,

¹ This section requires the participation of program "recipients, providers, advocates . . . provider representatives, organizations representing recipients, public authorities, nonprofit consortia and other interested stakeholders."

² CPR, HHS02, section B.

³ See the 2003-04 Humboldt Grand Jury report, An Investigation into Humboldt County's Adult Protective Services and In-Home Supportive Services <http://www.co.humboldt.ca.us/grandjury/Reports/2003-2004/2003-4-FinalReport.pdf>.

⁴ This stake is very minor, as all funds are returned in the state's realignment program. Their only cost is the interest foregone during the delay, which can last as long as three or four years.

nursing home facilities, which cost several times as much. This could result in referring high-need IHSS clients to nursing homes when remaining in their homes is possible under IHSS rules. Although UDW staff has observed this bias in one county, we know of no evidence that this phenomenon is widespread. Moreover, nursing home utilization in California is below the national average.

Much more analysis is needed of the fiscal impact of the proposed shift to state administration. CPR gives this impact at \$543 million, without further explanation. This figure does not match the 2004-05 California budget, which lists the county share for client hours alone for PCSP at \$461.9 million and for the Residual caseload, \$116.6 million, a total of \$578.5 million in the 2004-05 year. However, these funds are all returned to the county via the state realignment program: in effect, they are VLF and sales taxes collected by the state and redirected to the counties.

There are two other fiscal issues which must be addressed:

- **Counties are currently owed several hundred million dollars in realignment funds.** Realignment funds for nine different programs, including IHSS, are also owed to the county to pay back funds for previous years. The 2001-02 shortfall alone was \$180 million.⁵ A significant fraction of this money is due to IHSS caseload growth. Under current law, California counties are, in effect, lending this money to the state. HHS 02 does not articulate how these funds would be paid back. More analysis is needed to determine the actual fiscal effect of the proposed shift.
- **Wage and benefit rates differ markedly from county to county.** IHSS workers in different counties earn from \$6.75 per hour, the minimum wage, with no health care, holidays or other benefits on the low end, to \$10.50 plus health, vision, dental, pensions, holidays and sick leave on the high end. Worker contracts extend over widely varying periods of time.

C. CPR proposes to shift responsibility for the IHSS program from CDSS to CDHS. This proposal is based on a 1-1/2 page analysis developed by CDSS titled, "Move State administration of the IHSS program from CDSS to DHS," and dated April 1, 2004. Among the advantages it lists (a) the integration of CMIPS into CA-MMIS, (b) much more substantial Medi-Cal anti-fraud and abuse resources, (c) better oversight of Medi-Cal financial eligibility, (d) "greater assurances of compliance" with federal Medicaid rules for services, operations and financial claiming," reducing the risk of federal funding disallowances, (e) better integration with the Waiver Personal Care Services program and MSSP, and (f) simplified accounting. Two disadvantages are listed: a lack of resources or approaches for managing IHSS, and diminished flexibility in relationship with the counties. It also says, "Medi-Cal could not assume the IHSS/PCSP

⁵ Letter, Cheryl A. Stewart, Assistant Program Budget Manager, California State Department of Finance, to Steven C. Szalay, Executive Director, California State Association of Counties, October 2, 2003.

utilization review (service need assessment and prior authorization functions) from the counties. DHS would have to develop a working relationship with the county IHSS programs. Medi-Cal does not have a comparable working relationship with the counties of this sensitivity. Usually other Departments manage these relationships, such as DDS for the MEdi-Cal Waiver, DMH for the Medi-Cal Mental Health Waiver and DDAP for Drug Medi-Cal.” We offer two comments on this proposed shift:

Integrating the computer system for IHSS with the MediCal computer systems is a good idea, particularly inasmuch as our 2004-05 budget requires the California Department of Social Services (CDSS) to implement a new CMIPS system, including procurement, by August 31, 2004.⁶ In response to the efforts of UDW and others, it will have the capability to calculate accurate wage and benefit deductions. These requirements, already in law, ensure that CPR’s recommendation regarding the funding will become a reality. Increasing federal reimbursements from \$27.5 to \$37 million over the first three years and then saving \$23.8 to \$32 million in maintenance costs over the next seven years will become a reality.

Shifting responsibility to another agency could delay implementation of Quality Assurance reforms, including major savings, for at least a year. CDSS has projected savings in 2004-05 from these reforms at only 2% because of start-up needs.⁷ After new rules are in place, the Administration indicates savings could be as much as 25%.⁸ Even 10% savings in IHSS hours statewide, the minimum level cited by the Governor in his budget, would save over \$300 million annually (over \$100 million General Fund plus over \$50 million in realignment funds generated from VLF and sales tax). If actual savings are possible, they would not be realized for at least another year. Thus the change should not be made unless the Governor and Legislature are sure that major savings would accrue from the shift in responsibility.

In closing, UDW commends the Governor and members of the California Performance Review Team for their dedication and effort. We look forward to working with them further as these proposals are considered further.

⁶ Sections 45 through 48, SB1104, as amended July 29, 2004. The new W&I§12317 requires the new system to have the capacity to do all of the following:

- (a) Provide current and accurate information in order to manage the IHSS/PCSP caseload.
- (b) Calculate accurate wage and benefit deductions.
- (c) Provide management information to monitor and evaluate the IHSS/PCSP.
- (d) Coordinate benefits information and processing with the California Medicaid Management Information

System.

⁷ The 2% figure is derived from CDSS, Fiscal Policy and Estimates Branch, May 2004 Revise, “IHSS Quality Assurance,” p. 266.

⁸ Department of Finance, Governor’s Budget Summary, 2004-05, p. 130.